IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7356 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESHBHAI RAMESHBHAI KODIYA

Versus

STATE OF GUJARAT

Appearance:

MS SNEHA A JOSHI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. The petitioner is a detenu who came to be detained under the provisions of the Gujarat Prevention Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by Commissioner of Police,

Surat City, Surat, passed on 20th February, 1999 in exercise of powers under Section 3(1) of the PASA Act.

2. The present petition is registered on basis of an application received from the detenu through jail. Ms. Neha Joshi, learned advocate, has been appointed as advocate for rendering legal aid.

3. Mr. K.T. Dave, learned Assistant Government Pleader, has made available papers relating to detention for perusal of this Court.

4. It appears that the order was passed on February 20, 1999, detaining the petitioner under the PASA Act. However, the order came to be executed on June 14, 1999 and, as such, the petitioner is still under detention.

5. On perusal of the papers, it appears that the detaining authority took into consideration three offences registered against the petitioner with Varachha Road Police Station under Police Commissionerate of Surat for offences of theft. The detaining authority has taken into consideration statements of two anonymmous witnesses in respect of the incidents that occurred on 6th February, 1999 and 14th Januarys, 1999. The detaining authority observed that the petitioner is a dangerous person as defined under Section 2(c) of the PASA Act. His activities are detrimental to public order. His activities are required to be immediately prevented. The detaining authority took into consideration the possibility of resorting to less drastic remedies and concluded that they cannot be resorted to, as the petitioner is required to be immediately prevented from pursuing such activities detrimental to public order.

4. It appears that the statements of anonymous witnesses have been recorded on 6th February, 1999, 1999. The said statements have been verified by the detaining authority on 20th February, 1999 and the order of detention came to be passed on that very day. The detaining authority has come to conclusion that incidents narrated by the witnesses are correct and that the fear expressed by them qua the petitioner is genuine and their identity is required to be given the shelter of anonymity and the detaining authority, therefore, exercised powers under Section 9(2) of the Act.

5. It is clear from the grounds of detention that the detaining authority has taken into consideration the statements of three anonymous witnesses. In the instant case, the detaining authority has verified the statements

of anonymous witnesses on 20th February, 1999 and the order of detention was passed on the very same day. The authority came to a conclusion that the fear expressed by these witnesses is correct and genuine and, therefore, the authority exercised powers under Section 9(2) of the PASA Act by not disclosing the identity of the witnesses. This Court is at loss to appreciate how the detaining authority could have arrived at this conclusion in such short spell. The detaining authority has not filed any affidavit in reply. It is, therefore, not possible to know as to what were the factors and material considered by the detaining authority besides the statements of the anonymous witnesses to come to conclusion that the fear expressed by the witnesses was genuine, that the incidents stated by the witnesses were correct and that there was need for exercise of powers under Section 9(2) of the PASA Act.

6. Similar such situation arose before a Division Bench of this Court in the case of Kalidas Chandubhai Kahar (supra), where the statements were verified on 16th October, 1992 and the order was passed on 17th October, 1992 and the Division Bench said that exercise of powers under Section 9(2) of the PASA Act was improper. This improper exercise of powers under Section 9(2) of the PASA Act was held to be detrimental to the right of the detenu of making an effective representation contemplated under Article 22(5) of the Constitution. The order of detention was, therefore, quashed. The facts of the present case squarely fall in line with the facts of that case. The order of detention, therefore, stands vitiated in the instant case as well and the petition deserves to be allowed on this count alone.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated 20th February, 1999, passed against the detenu-Maheshbhai Rameshbhai Kodiya is hereby quashed. The detenu is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J]

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